

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

UNITED STATES OF AMERICA,	:	
	:	
PLAINTIFF,	:	
	:	
v.	:	CIVIL ACTION NO.2:06cv116-MEF
	:	
FIVE HUNDRED FORTY-THREE	:	
THOUSAND ONE HUNDRED NINETY	:	
DOLLARS (\$543,190.00)	:	
IN UNITED STATES CURRENCY,	:	
	:	
DEFENDANT.	:	

RESPONSE TO CLAIMANT'S MOTION FOR SUMMARY JUDGMENT

Comes now the United States of America (United States), by and through Leura G. Canary, United States Attorney, Middle District of Alabama, and John T. Harmon, Assistant United States Attorney, and hereby states as follows:

1. On May 18, 2007, the Claimant filed an unsupported Motion for Summary Judgment and further requested "the Court to hold this motion pending until further discovery, filings and rulings."

2. The Uniform Scheduling Order in this case required a motion for summary judgment to be filed with a brief and all supporting evidence and a reference, by a specific line and page, to each portion of the submitted evidence supporting judgment. Pursuant to this Order, a failure to make such a filing and reference resulted in the evidence not being considered by the Court. The Order further required such dispositive motion be made by May 18, 2007.

3. The Claimant makes no representation to the court of any basis for his failure to file and properly designate any evidence in support of his motion. He does state that he desires to hold the motion open pending "further discovery." However, this request is made by counsel and is unsworn and this is contrary to Rule 56(f) of the Federal Rules of Civil Procedure. It should not be considered by the Court. Finally, Claimant cites no authority for his "request" to keep "this motion pending." The Claimant should not be allowed to ignore the schedule set by the Court. Allowing an improperly filed motion to stay open until its deficiencies are cured defeats the entire purpose of setting motion filing dates.

4. The Motion for Summary Judgment is not filed in accordance with this Court's Order or Rule 56 of the Federal Rules of Civil Procedure and should be denied.

Respectfully submitted this 6th day of June, 2007.

FOR THE UNITED STATES ATTORNEY
LEURA G. CANARY

/s/ John T. Harmon
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CERTIFICATE OF SERVICE

I hereby certify that on June 6, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: **Bruce Maddox**.

/s/ John T. Harmon

John T. Harmon

Assistant United States Attorney